

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE UNITED STATES NAVY, REPRESENTED BY THE NAVAL HISTORY AND  
HERITAGE COMMAND (N09BH) (NHHC) AND ITS DESIGNATED EXECUTOR FOR  
THE UNDERTAKING,  
THE NATIONAL NAVAL AVIATION MUSEUM (NNAM),  
AND  
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICER (ISHPO)  
REGARDING  
THE RECOVERY OF ONE NAVY OWNED WWII ERA AIRCRAFT (FM-2 WILDCAT)  
FROM THE ILLINOIS WATERS OF LAKE MICHIGAN

**WHEREAS**, the United States Navy (Navy), represented by the NNAM has initiated the recovery of a Navy-owned FM-2 Wildcat (Bureau Number 57039) (the undertaking) for the purpose of long term preservation/conservation of the aircraft for historic and educational purposes that are in the interest of the Navy history program, the region of the Great Lakes represented in part by ISHPO and the general public; and

**WHEREAS**, it is the ISHPO position that the FM-2 Wildcat is considered part of a group of aircraft that is the only known collection of historic WWII-era Navy aircraft preserved in cold, fresh water; and because of the regional and national significance of the aircraft group, the significant battle service of some of these aircraft, their importance in the training of carrier pilots in aircraft landings and takeoffs, their possible association with important people, their possible rarity of type and archeological significance of the Navy aircraft group, they appear to meet the eligibility criteria for listing in the National Register of Historic Places; and

**WHEREAS**, the federal regulations (32 CFR 767.3) provide and the ISHPO believes that *in situ* preservation is the preferred management option, but the ISHPO recognizes the public benefits to be gained from preservation and exhibition; and

**WHEREAS**, decisions about whether to recover or manage in place a Navy historic aircraft are made by the Director, NNAM, in consultation with the Director, NHHC, and the determination has been made that the protection from the damaging effects of the aircraft submergence along with historical benefits call for recovery of the aircraft after considering the views of the ISHPO and other qualified history and preservation experts; and

**WHEREAS**, it is the ISHPO position that the undertaking may have an adverse effect on the FM-2 Wildcat and the WWII-era Navy aircraft group in Lake Michigan; and

**WHEREAS**, it is the position of NNAM that the undertaking may have an adverse effect, but that it is in the public interest to recover, preserve and exhibit this important historic aircraft, pursuant to the requirements in 32 CFR 767.3(b); and

**WHEREAS**, the ISHPO has a direct interest in the aforementioned goals relating to the history of the Great Lakes region, and has participated in the consultation to seek ways to avoid, minimize, or mitigate adverse effects pursuant to the regulations of the Advisory Council on

Historic Preservation (ACHP) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f )(NHPA); and

**WHEREAS**, pursuant to 36 C.F.R. § 800.6(a)(1), the NNAM notified the ACHP of the adverse effect finding by providing the documentation specified in 36 C.F.R. § 800.11(e), and the ACHP elected not to participate in the consultation;

**WHEREAS**, other aviation historical associations and museums have been or will, on request, be provided the opportunity to comment on this undertaking,

**NOW, THEREFORE, NNAM and ISHPO** agree that the undertaking will be implemented in accordance with the following stipulations that take into account the effect of the undertaking on historic properties while safeguarding the interests of all parties in preserving the nation's history and heritage.

### **Stipulations**

The NNAM will ensure that the following measures are applied.

#### **1. Standards for the Undertaking**

A. The Undertaking will be conducted in consideration of and for purposes consistent with the NHPA applicable rules, regulations, U.S. Navy mandates, federal guidelines and any other applicable law, rule or regulation including the following:

i. Secretary of the Interior Standards and Guidelines for Archaeology and Historic Preservation, 48 Fed Reg. 44,716-44,740 (Sept. 29, 1983);

ii. Guidelines for Evaluating and Documenting Historic Aircraft Properties (National Park Service, 1998);

B. The parties to this memorandum of agreement (the "MOA" or "Agreement") recognize that the NNAM, as a division of the Navy, cannot issue a permit to itself for property it owns. However, the Undertaking will be conducted in a manner consistent with the appropriate policies and recommended practices outlined in 32 CFR Part 767, Application Guidelines for Archeological Research Permits on Ship and Aircraft Wrecks under the Jurisdiction of the Department of the Navy, as may be applied by NHHC.

C. Associated with the above, all documents, studies and proposals produced for and as a result of this Undertaking, especially the aircraft recovery and rework plans (preservation and curation), including documentation, recordation and reports generated, will comply with the NHHC determined applicable laws, regulations and guidelines described in 1.A. and 1.B and will be produced and made a part of the record as well as provided to the signatories of this agreement as required.

## 2. Recordation

A. Prior to the commencement of any recovery activity, NNAM will record the FM-2 Wildcat, Bureau Number 57039 in its present location to create a permanent record of its existence prior to it being removed. The recordation will be that of video and/or still photography. NNAM will provide copies of the recordation package to the ISHPO for placement in the Archives of Illinois and appropriate local repositories designated by the ISHPO. Associated with the above will be diagrams of the geographic area and relative position of the aircraft on the bottomlands.

B. Included with the above will be a copy of the Aircraft History Card and Aircraft Accident Report Summary, which denotes the specific history of this individual aircraft up to and including its final flight, as recorded by the Department of the Navy.

C. The video history of the World War II operation in Lake Michigan, including examples of previous NNAM undertakings in Lake Michigan, will be provided to the ISHPO.

## 3. Recovery

A. The Navy approved plan for the pre-recovery, recovery and immediate post-recovery operation and the specific Navy requirements for this type operation will be provided to the ISHPO and attached to this MOA as APPENDIX 1. The plan includes requirements for and actual preparation for transport and stipulations for accountability and preservation during transport. In addition, the Navy will provide certification of issuance of all necessary permitting up to and including a joint Army Corps of Engineers permit. This documentation of the recovery process and post-recovery preparation for transportation will be submitted in the form of a narrative description as well as a video. This documentation will also include a description of the pre-recovery site preparation, the actual recovery process, and a post-recovery report on the affected site. Also included will be a submission of the coordinates and water depth of the aircraft. The documentation will be overseen by an Archaeologist meeting the Secretary of the Interior's Professional Qualifications for Archaeology (48 Federal Register 44738-39, September 29, 1983) with a demonstrated familiarity with underwater archaeological investigations.

B. The ISHPO, at its discretion and expense, may wish to provide a qualified Archaeologist specializing in underwater archaeology to observe the aircraft recovery from Lake Michigan.

## 4. Preservation and Curation

A. Interface among MOA parties specified in this section does not imply or require additional future agreement.

B. The NNAM will perform any immediate stabilization work deemed necessary following the recovery of the aircraft.

C. Based on a post-recovery assessment of the aircraft's condition, a long term post-recovery plan that will cover all Navy actions to be taken will be developed by NNAM. The plan will include preservation and disposition declarations. The specifics of this post-recovery plan cannot be determined until completion of the post-recovery assessment.

D. The NNAM will provide the ISHPO with a copy of the post-recovery assessment as soon as it is available.

E. The parties to this MOA agree that preservation and curation of the aircraft is the responsibility of NNAM in consultation with NHHHC. Rework can range from cleaning and preservation "as is" when recovered to full return of the aircraft to a "like new" appearance (or any combination within this range). The rework objective will be determined after post-recovery assessment based on condition of the aircraft components, and equipment, and the needs of the Navy history program. In any rework plan, the preservation and conservation of the absolute maximum of historical relevance, originality and accuracy will be the stated objective.

F. The NNAM will consult with the ISHPO as it develops the rework objective and the rework plan, which includes rework action that may consist of preservation/conservation/restoration and disposition actions. The ISHPO will provide any comments on the rework plan and objective within thirty (30) days of receipt of relevant information, and the NNAM will consider the ISHPO's comments.

G. The NNAM will provide the final rework plan to the parties to this MOA prior to commencing rework activities.

H. In accordance with Appendix 2, NNAM agrees to the following practices for rework (stabilization actions immediately following recovery is excluded from this requirement):

- i. Historical research and comparison with similar existing aircraft will be used to identify those features and equipment that were a part of the functioning aircraft.

- ii. NNAM will carefully document its decisions and actions as it carries out the rework activities, including detailed records of all original features, material, or equipment removed, replaced or modified.

- iii. Where possible, replacement of missing equipment or features will be performed using the exact kind and period of manufacture as was on the original aircraft.

I. Hazardous Material Handling will be done in accordance with applicable requirements and made a part of the record.

J. Upon completion of the network, the NNAM will provide the parties to this MOA with a rework summary, which includes the preservation/conservation/restoration and disposition actions taken by NNAM. The plans and reports submitted to the ISHPO will be identical to those required by and submitted to the NHHHC.

K. Regardless of the rework objective or where it is displayed, this aircraft will remain the property of the Navy. The Navy will be responsible for its preservation and handling.

L. Upon completion of all planned rework to be undertaken, the aircraft will be placed in NNAM or in a venue that meets the criteria of NNAM for loan approval. A requirement for presentation in any venue will be a mandate that a history of the aircraft and its association with the Great Lakes area and the State of Illinois be made a part of the presentation of the aircraft. Text of that interpretation will be made available to the ISHPO for comment prior to the aircraft's disposition

## 5. Other Considerations

A. NNAM will be responsible for meeting any applicable Federal, state or local requirements by law or regulation applicable to this undertaking and that are outside the scope of ISHPO responsibility. This includes appropriate liaison with the ACHP. It also includes any other requirements that may be appropriate under the Section 106 process.

B. In view of the extensive consultation between NNAM and ISHPO preceding this MOA, signatures to this document will constitute full agreement on the undertaking as specified herein.

C. This MOA will be considered completed with the submission of the completed rework reports to MOA parties.

## 6. MOA Amendment, Dispute and Termination Clauses

A. Amendments: Any signatory to this Agreement may propose to the other signatories that it be amended, whereupon the signatories will consult in accordance with 36 C.F.R § 800.6(c) (7) to consider such an amendment.

### B. Dispute Resolution:

i. Should any signatory to this Agreement object to any action taken or proposed by the NNAM that is not covered by or included in this Agreement, the NNAM/NHHC (as appropriate) will consult with that signatory party to resolve the objection. If the NNAM after initiating such consultation determines that the objection cannot be resolved the NNAM will forward documentation relevant to the objection to the ACHP, including the NNAM's proposed response to the objection. Within forty-five (45) days after receipt of all pertinent documentation, the parties understand that the ACHP will exercise one of the following options:

(a) Advise the NNAM that the ACHP concurs in the NNAM's proposed final decision, whereupon the NNAM will respond accordingly;

(b) Provide the NNAM with recommendations, which the NNAM will take into account in reaching a final decision regarding its response to the objection; or

(c) Notify the NNAM that the objection will be referred to the ACHP membership for formal comment and proceed to refer the objection and comment within forty-five (45) days. The resulting comment will be taken into account by the NNAM in accordance with 36 C.F.R. §800.7(c)(4).

ii. Should the ACHP not exercise one of the above options within forty-five (45) days after receipt of all pertinent documentation, the NNAM may assume the ACHP's concurrence in its proposed response to the objection.

iii. The NNAM will take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the NNAM's responsibility to carry out all actions under this Agreement that are not a subject of the objection will remain unchanged.

C. Termination of MOA: Any signatory to this Agreement may terminate it by providing sixty (60) days notice to the other parties, provided that the parties consult during the period preceding the termination to seek agreement on amendments or other actions that will avoid termination. In the event of termination of this Agreement by the ISHPO, the NNAM will comply with the provisions of 36 C.F.R § 800.6(c)(8).

D. Duration of MOA: This Agreement will terminate if its terms are not carried out within five (5) years from the date of the last signature on this Agreement. Prior to such time, the NNAM may consult with the other signatories to reconsider the terms of the Agreement and amend it in accordance with Stipulation 6.A.

E. Anti-Deficiency Act: The stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act (31 United States Code [U.S.C.] Sec. 1341). If compliance with the Anti-Deficiency Act alters or impairs the NNAM's ability to implement the stipulations of this Agreement, the NNAM will consult with the parties in accordance with the amendment and termination procedures found in this Agreement.

Execution and implementation of this MOA evidences that NNAM has afforded the ACHP a reasonable opportunity to comment on the project and that NNAM has taken into account the effects of the undertaking on historic properties.

NATIONAL NAVAL AVIATION MUSEUM

By:   
ROBERT L. RASMUSSEN  
Director

Date: 10/30/12

ILLINOIS STATE HISTORIC PRESERVATION OFFICER

By: Chene E. Hoot Deputy Date: Nov. 1, 2012

State Historic Preservation Officer